

AMENDED IN SENATE AUGUST 26, 2002

AMENDED IN SENATE AUGUST 7, 2002

AMENDED IN SENATE JUNE 18, 2002

AMENDED IN ASSEMBLY APRIL 22, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2944

Introduced by Assembly Member Kehoe
(Principal coauthor: Assembly Member Shelley)
(Principal coauthor: Senator Bowen)
(Coauthors: Assembly Members John Campbell, Koretz,
Lowenthal, and Nation)
(Coauthors: Senators Dunn, Morrow, and O’Connell)

February 25, 2002

An act to amend Section 17538.4 of the Business and Professions Code, relating to advertising, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL’S DIGEST

AB 2944, as amended, Kehoe. Advertising: facsimile machines.

Existing state law prohibits a person conducting business in this state from faxing or electronically mailing unsolicited advertising material, unless certain conditions are met.

This bill would delete the existing state law prohibition relative to the faxing of unsolicited advertising material.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~ ²/₃. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17538.4 of the Business and Professions
2 Code is amended to read:
3 17538.4. (a) No person or entity conducting business in this
4 state shall electronically mail (e-mail) or cause to be e-mailed
5 documents containing unsolicited advertising material for the
6 lease, sale, rental, gift offer, or other disposition of any realty,
7 goods, services, or extension of credit unless that person or entity
8 establishes a toll-free telephone number or valid sender operated
9 return e-mail address that the recipient of the unsolicited
10 documents may call or e-mail to notify the sender not to e-mail any
11 further unsolicited documents.
12 (b) All unsolicited e-mailed documents subject to this section
13 shall include a statement informing the recipient of the toll-free
14 telephone number that the recipient may call, or a valid return
15 address to which the recipient may write or e-mail, as the case may
16 be, notifying the sender not to e-mail the recipient any further
17 unsolicited documents to the e-mail address, or addresses,
18 specified by the recipient.
19 The statement shall be the first text in the body of the message
20 and shall be of the same size as the majority of the text of the
21 message.
22 (c) Upon notification by a recipient of his or her request not to
23 receive any further unsolicited e-mailed documents, no person or
24 entity conducting business in this state shall e-mail or cause to be
25 e-mailed any unsolicited documents to that recipient.
26 (d) This section shall apply when the unsolicited e-mailed
27 documents are delivered to a California resident via an electronic
28 mail service provider's service or equipment located in this state.
29 For these purposes "electronic mail service provider" means any
30 business or organization qualified to do business in this state that
31 provides individuals, corporations, or other entities the ability to
32 send or receive electronic mail through equipment located in this
33 state and that is an intermediary in sending or receiving electronic
34 mail.



(e) As used in this section, “unsolicited e-mailed documents” means any e-mailed document or documents consisting of advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit that meet both of the following requirements:

(1) The documents are addressed to a recipient with whom the initiator does not have an existing business or personal relationship.

(2) The documents are not sent at the request of, or with the express consent of, the recipient.

(f) As used in this section, “e-mail” or “cause to be e-mailed” does not include or refer to the transmission of any documents by a telecommunications utility or Internet service provider to the extent that the telecommunications utility or Internet service provider merely carries that transmission over its network.

(g) In the case of e-mail that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, the subject line of each and every message shall include “ADV:” as the first four characters. If these messages contain information that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit that may only be viewed, purchased, rented, leased, or held in possession by an individual 18 years of age and older, the subject line of each and every message shall include “ADV:ADLT” as the first eight characters.

(h) An employer who is the registered owner of more than one e-mail address may notify the person or entity conducting business in this state e-mailing or causing to be e-mailed documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit of the desire to cease e-mailing on behalf of all of the employees who may use employer-provided and employer-controlled e-mail addresses.

(i) This section, or any part of this section, shall become inoperative on and after the date that federal law is enacted that prohibits or otherwise regulates the transmission of unsolicited advertising by electronic mail (e-mail).

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety

- 1 *within the meaning of Article IV of the Constitution and shall go*
- 2 *into immediate effect. The facts constituting the necessity are:*
- 3 *In order for the provisions of this act to take effect as soon as*
- 4 *possible, it is necessary that this act take effect immediately.*

